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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,461	06/23/2003	Michael McClary	4906P114	2641

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EXAMINER

LEE, THOMAS C

ART UNIT PAPER NUMBER

2115

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,461

Applicant(s)

MCCLARY ET AL.

Examiner

Nitin C. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 2-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. This is in responsive to preliminary amendment filed on 24 November 2005.
2. Claim 1 has been cancelled.
3. Claims 2 – 25 have been added new.
4. Claims 2 – 25 are presented for the examination.

Specification

5. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 11, recites the limitation "the phase adjuster comprises" in line 1, on page. There is insufficient antecedent basis for this limitation in the claim.

Claim Objections

7. Claims 2, 8, and 12, are objected to because of the following informalities:

8. In the claim 1, replace "an device" with ---a device---in line 1, on page 4.

Appropriate correction is required.

9. In the claim 2, replace "the occupancy" in line 1 on page 4 with ---an occupancy--
- as occupancy has not previously recited in the claim.

10. In the claim 12, replace "the occupancy" in line 6 on page 5 with ---an
occupancy--- as occupancy has not previously recited in the claim.

Double Patenting

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The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 2 – 25 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 - 25 of copending Application No. 10/602481. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the limitations of claims 2 - 26 of current application are present in claims 1 - 25 of copending application.

12. Each and every steps involved in method claim 2, of the current applications are identical to claim 1 of co-pending application 10/602481 except the clock signal of current application is called as clock source in pending application.

13. Each and every elements of a device in claim 8, of the current applications are identical to claim 7 of co-pending application 10/602481 except a clock control logic unit of current application is called as an aligner in pending application.

14. Each and every card namely primary, secondary, and traffic card with coupling arrangement of cards in an apparatus claim 12, of the current applications are identical to device claim 12 of co-pending application 10/602481 except a clock control logic unit of current application is called as an aligner in pending application.

15. Each and every means of an apparatus claim 16, of the current applications are identical to an apparatus claim 16 of co-pending application 10/602481 except a clock signal of current application is called as clock source in pending application.

16. Each and every set of operations of claim 21 of the current applications are nearly identical to claim 22, of co-pending application 10/602481 except the clock signal of current application is called as clock source in pending application.

17. Each and every steps involved in dependent claims 2 - 7, of the current applications are nearly identical to claims 1 – 7 of co-pending application 10/602481 except the clock signal of current application is called as clock source in pending application.

18. Each and every elements of a device in dependent claims 9 – 11, of the current applications are almost identical to claim 8 – 11 of co-pending application 10/602481 except a clock control logic unit of current application is called as an aligner in pending application.

19. Each and every elements in dependent claims 13 - 15, of the current applications are almost identical to device claims 13 – 15 of co-pending application 10/602481 except a clock control logic unit of current application is called as an aligner in pending application.

20. Each and every means of dependent in claims 17 - 20, of the current applications are almost identical to dependent claims 17 – 21 of co-pending application 10/602481 except a clock signal of current application is called as clock source in pending application.

21. Each and every set of operations of dependent claims 22 – 25 of the current applications are nearly identical to claims 23 - 27; of co-pending application 10/602481 except the clock signal of current application is called as clock source in pending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

22. Claims 8, and 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Claveloux et al. [hereinafter as Claveloux], US Patent 5,434,892.

23. As to claim 8, Claveloux discloses a device [20A HLH, fig. 3A] comprising:

- a. a primary memory [83 SRAM];
- b. a secondary memory [80, RAM]; and
- c. a clock control logic circuit [82 HLH controller] coupled to the primary memory [83] and secondary memory [80] to adjust [to speed up or slow down 8 MHZ

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reference clock] a primary clock signal [8 MHZ reference clock] to adjust an occupancy [fullness] of the primary memory [83][col. 10, lines 48 – 67, col. 11, lines 1 – 32, fig. 3A].

24. As to claim 12, Claveloux discloses an apparatus [10, virtual loop carrier system fig. 1] comprising:

- a. a primary control card [mother board is inherent to the PC 66A, fig. 3A];
- b. a secondary control card [ADSL modem is inherently have a card]; and
- c. a traffic card [20A HLH Home Lan Hub is inherently have a card, fig. 3A]

coupled to the primary control card [mother board of PC 66A] and secondary control card [ADSL modem card of ADSL modem 22], the traffic card having a clock control logic circuit [82 HLH controller] coupled to primary memory [83 SRAM] and secondary memory [80 RAM] to adjust [to speed up or slow down 8 MHZ reference clock] a primary clock signal [8 MHZ reference clock] to adjust an occupancy [fullness] of the primary memory [83][col. 10, lines 48 – 67, col. 11, lines 1 – 32, fig. 3A].

25. **Examiner's note:** Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant.

Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

26. **Prior Art not relied upon:** Please refer to the references listed in attached PTO-892, which, are not relied upon for claim rejection since these references are relevant to the claimed invention.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nitin C. Patel whose telephone number is 571-272-3675. The examiner can normally be reached on 6:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Browne can be reached on 571-272-3670. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nitin C. Patel
January 17, 2006


LYNNE H. BROWNE
SUPERVISORY PATENT EXAMINER
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